IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 987 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VADHER KESHAVBHAI SAJANBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 987 of 2001

MR SUNIL K SHAH for Petitioner No. 1

MR KG SHETH, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 12/03/2003

ORAL JUDGEMENT

Heard learned counsel for the petitioner, Mr.Sunil K.Shah and learned APP, Mr.K.G.Sheth, for the

State.

2. It is the case of the present petitioner that he stood as surety to the tune of Rs.25,000/- to one Babubhai M.Matawa, who has been released on bail by the learned Judicial Magistrate (First Class), Dhoraji, with certain conditions while passing the order in Cri.Misc.Appln.No.170 of 2001. Even solvent surety certificate was also produced by the petitioner to that effect. However, during the course of trial, since the original accused committed breach of some of the conditions, bail bond of the original accused was cancelled and accused was taken to judicial custody by issuing simultaneous notice to the present petitioner. The learned Magistrate ultimately passed an order imposing penalty of Rs.25,000/- to the surety. Against the said order, he preferred Criminal Revision Application No.387 of 2001 before this Court. However, said petition was withdrawn by the learned counsel for the petitioner with a liberty to file appeal before the Sessions Court. Thereafter, Criminal Appeal No.25 of 2001 was preferred by the petitioner wherein while granting stay vide order dated 7-9-2001, court below has asked the petitioner to deposit an amount of Rs.10,000/-before the Court of learned J.M.F.C., Dhoraji in Criminal Case No.770 of 2001. However, the appeal was finally rejected vide order dated 8-11-2001 by the learned Addl. Sessions Judge, Gondal. Hence, the present petition.

3. Mr.Sunil Shah has mainly submitted that petitioner is a poor person who has already deposited Rs.10,000/- (Rupees Ten Thousand Only) before the Court of J.M.F.C., Dhoraji as directed by the learned Addl. Sessions Judge, Gondal and hence, it is requested that mercy be shown towards the present petitioner.

4. Facts remain that petitioner has stood as surety to one Mr.Babubhai M. Matawa wherein accused is in judicial custody since long and petitioner has been imposed penalty of Rs.25,000/- for committing breach of the conditions of the order of the court below by said Babubhai M.Matawa. It appears that while granting stay, Sessions Court has directed the petitioner to deposit an amount of Rs.10,000/- and it appears that said amount has been deposited by the petitioner. Hence, in my opinion, aforesaid depositing of amount by the petitioner is quite reasonable looking to the facts and circumstances of the case and, therefore, if mercy will be shown towards the present petitioner, it will meet the ends of justice.

5. In view of the above, judgment and order dated 3-8-2001 passed by the learned Addl. Sessions Judge, Gondal below Ex.5 in Criminal Misc.Appln.No.230 of 2001 as also order dated 8-11-2001 passed by the learned Addl. Sessions Judge, Gondal in Criminal Appeal No.25 of 2001 confirming the order dated 23-8-2001 passed by the learned J.M.F.C., Dhoraji below Ex.1 in Criminal Case No.770 of 2001 are quashed and set aside with an observation that the amount of Rs.10,000/- deposited by the petitioner in Criminal Case No.770 of 2001 as directed by the learned Addl. Sessions Judge, Gondal, would be a sufficient penalty. Rule is made absolute to the aforesaid extent.

(R.P.DHOLAKIA,J.)

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